

EXHIBIT D

At a Part of the Supreme  
Court of the State of New  
York held in and for the  
County of Putnam at the  
Courthouse located at 40  
Glennida Avenue, Carmel  
NY 10512 on the 8 day  
of May, 2007

\_\_\_\_\_  
Marshall E. Bloomfield,

Petitioner-Judgment Creditor

-against-

Dermot MacShane

Respondent-Judgment Debtor

and

Sergeant's Benevolent Association Annuity Fund,  
The City of New York Police Pension Fund, and the  
Fund Office of Local 580 of Architectural and  
Ornamental Iron Workers,

Respondents  
\_\_\_\_\_

Index No: 969/07  
Purchased:

ORDER TO SHOW  
CAUSE

*Appearance  
Required*

Upon the annexed Verified Petition of Marshall E. Bloomfield, and upon all  
papers and proceedings had herein,

Let the Respondent-Judgment Debtor, Dermot MacShane, and the  
Respondents, Sergeant's Benevolent Association Annuity Fund, The City of New York  
Police Pension Fund, and the Fund Office of Local 580 of Architectural and Ornamental  
Iron Workers show cause at the Supreme Court of the State of New York, County of  
Putnam, at the Courthouse located at 40 Glennida Avenue, Carmel NY 10512, on the

22 day of May, 2007, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as Counsel can be heard, why an Order and Judgment should not be made and entered

- (1) foreclosing the retaining and charging lien in favor of Marshall E. Bloomfield, Esq. and against Respondent-Judgment Debtor, Dermot MacShane, and any interest accruing in property to him upon the final disposition of the equitable distribution phase of a certain action previously commenced in this Court and captioned Dermot MacShane, Plaintiff, against Judie MacShane, Defendant, and bearing Index Number 1798/02, and as agreed to by said Respondent-Judgment Debtor on the 15<sup>th</sup> day of April, 2004, and as approved by this Court pursuant to 22 NYCRR §202.16(c)(2) in a transcribed Decision on a hearing held October 8, 2004, and further reduced to an Order of this Court dated the 18<sup>th</sup> day of November, 2004, a Judgment of this Court dated the 16<sup>th</sup> day of December, 2004, and entered on the 6<sup>th</sup> day of January, 2005, and
- (2) granting to Petitioner such other and further relief as to this Court may seem just, proper, and equitable.

Efficient cause having been alleged, let Respondent-Judgment Debtor, Dermot MacShane be restrained from possessing, disposing of, transferring, assigning, or otherwise hypothecating any personal property of his to which Petitioner-Creditor has a security interest and to which a lien has attached,

including any such property held by Respondents, Sergeant's Benevolent Association Annuity Fund, The City of New York Police Pension Fund, and the Fund Office of Local 580 of Architectural and Ornamental Iron Workers pending hearing of the within Petition;

Sufficient cause having been alleged, let Respondent, Sergeant's Benevolent Association Annuity Fund, its agents, servants, and employees be restrained from disposing of, transferring, assigning, encumbering or otherwise hypothecating any personal property of Respondent-Judgment Debtor, Dermot MacShane, to which Petitioner-Judgment Creditor has a security interest and to which a lien has attached, as alleged in the Petition, pending hearing of the within Petition;

Sufficient cause having been alleged, let Respondent, The City of New York Police Pension Fund, its agents, servants, and employees be restrained from disposing of, transferring, assigning, encumbering, or otherwise hypothecating any personal property of Respondent-Judgment Debtor, Dermot MacShane, to which Petitioner has a security interest and to which a lien has attached, as alleged in the Petition, pending hearing of the within Petition;

Sufficient cause having been alleged, let Respondent, Fund Office of Local 580 of Architectural and Ornamental Iron Workers, its agents, servants, and employees be restrained from disposing of, transferring, assigning, encumbering, or otherwise hypothecating any personal property of Respondent-Judgment Debtor, Dermot MacShane, to which Petitioner has a security interest and to which a lien has attached, as alleged in the Petition, pending hearing of the within Petition;

Sufficient cause having been alleged, let service of a copy of this Order, the Verified Petition, and all papers in support thereof, upon Respondent-Judgment Debtor, Dermot MacShane, by personal service upon him pursuant to CPLR §308 on or before the 10 day of May, 2007, be deemed good and sufficient service and notice thereof, and

Sufficient cause having been alleged, let service of a copy of this Order, the Verified Petition, and all papers in support thereof, upon Respondent, Sergeant's Benevolent Association Annuity Fund, 35 Worth Street, NY NY 10015, by personal service upon it on or before the 10 day of May, 2007, be deemed good and sufficient service and notice thereof;

Sufficient cause having been alleged, let service of a copy of this Order, the Verified Petition, and all papers in support thereof, upon Respondent The City of New York Police Pension Fund, 233 Broadway, NY NY 10279, by personal service upon it on or before the 10 day of May, 2007, be deemed good and sufficient service and notice thereof, and

Sufficient cause having been alleged, let service of a copy of this Order, the Verified Petition, and all papers in support thereof, upon Respondent the Fund Office of Local 580 of Architectural and Ornamental Iron Workers, 501 West 42<sup>nd</sup> Street, NY NY 10036, by personal service on or before the 10 day of May, 2007, be deemed good and sufficient service and notice thereof.

Enter



Hon. Andrew R. O'Rourke  
Supreme Court Justice

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF PUTNAM**

\_\_\_\_\_  
Marshall E. Bloomfield,

Petitioner-Judgment Creditor

-against-

Dermot MacShane,

Respondent-Judgment Debtor

And

Sergeant's Benevolent Association Annuity Fund,  
The City of New York Police Pension Fund, and the  
Fund Office of Local 580 of Architectural and  
Ornamental Iron Workers,

\_\_\_\_\_  
Respondents

Index No:  
Purchased

**VERIFIED PETITION**

Marshall E. Bloomfield as and for his Verified Petition respectfully sets forth and alleges:

- 1) At all times hereinafter mentioned, Petitioner was and still is an Attorney admitted to practice law in the State of New York.
- 2) Petitioner was the former Attorney for Respondent-Judgment Debtor, Dermot MacShane, in a matter commenced in the Supreme Court, County of Putnam, and captioned Dermot MacShane, Plaintiff, against Judge MacShane, Defendant, and bearing Index Number 179B/02.
- 3) During the course of my representation of Mr. MacShane and in accordance with 22 NYCRR §202.16[c](2), Respondent-Judgment Debtor acknowledged a certain indebtedness to me and consented to an assignment of an interest in his property that would accrue to him upon the final disposition of the equitable distribution phase of the aforesaid matrimonial matter. Such acknowledgement and consent was duly executed by Mr. MacShane on the 15<sup>th</sup> day of April, 2004. A copy of Respondent-Judgment Debtor's acknowledgement and consent is annexed hereto, made a part hereof, and marked EXHIBIT A.

- 4) By Order to Show Cause signed on the 1<sup>st</sup> day of June, 2004, by Hon. Justice Fred L. Shapiro (copy of which is annexed hereto, made a part hereof, and marked EXHIBIT B, your Petitioner moved this Court for relief including, *inter alia*, the following:
- a) an Order permitting and allowing and granting to Movant [Petitioner-Judgment Creditor herein] leave to withdraw as Counsel for Plaintiff [Respondent-Judgment Debtor herein]; and
  - b) an Order approving Petitioner-Judgment Creditors interest in the property of Respondent-Judgment Debtor [Dermot MacShane] pursuant to 22 NYCRR §202.16(c)(2).
- 5) The aforesaid motion brought on by Order to Show Cause was originally made returnable June 21<sup>st</sup>, 2004, was subsequently adjourned to July 7, 2004, August 12, 2004, and finally to October 6, 2004, at which time it was heard, submitted, and granted by a transcription Order of this Court, a copy of which is annexed hereto, made a part hereof, and marked EXHIBIT C.
- 6) The aforesaid transcribed Decision and Order of this Court (EXHIBIT C herein) provides in pertinent part at pages 3-4 thereof, as follows:

"Unfortunately the case could not be resolved and Mr. Bloomfield has now asked me to decide the motion that he made.

I'm going to grant his application. I'm going to relieve him as counsel. I'm going to grant him a retaining lien and he'll provide me with an affidavit served on both Ms. Hudak and Mr. MacShane, as to the fees brought up to date.

I have the fees up to the date of the motion. I need from the date, return date of the motion forward and the Court would be inclined to grant that as well.

You [Mr. MacShane] may be heard on the issue. Not as to whether he should have the lien, Mr. MacShane. You shall be heard on whether the fees are reasonable and necessary. That's the only argument you can make, that the fees were not reasonable or necessary for this case, but he does not have to turn over the file until that lien is resolved."



- 7) Upon the hearing of the motion, the following colloquy occurred between the Court and Respondent-Judgment Debtor herein evincing the Court's grant of a lien on Mr. MacShane's property as well as Mr. MacShane's acknowledgement of the existence of the same and his agreement thereto:

"MR. MACSHANE: In light of the lien on the property, do I have access to my file?

THE COURT: No. Until you either pay the bill or I set the lien, if you want to agree to the lien, I'll have him send the file over, but in no event will any money go to you, but I'm not going to lift the lien on any property.

MR. MACSHANE: I'm not looking for a lift on the lien. I'm agreeing to the lien." (See EXHIBIT C, page "22").

- 8) Upon the submission of an additional Affirmation of Services on notice to Ms. Hudak, the Attorney for Judie MacShane, and upon notice to Respondent-Judgment Debtor herein, Dermot MacShane, and upon notice of settlement of a Judgment to said parties, this Court made and entered a Judgment on the 6<sup>th</sup> day of January, 2005, a copy of which is annexed hereto, made a part hereof, and marked EXHIBIT D.

- 9) The aforesaid Judgment provides in pertinent part:

"ORDERED and ADJUDGED that Judgment be made and entered herein in favor of Marshall E. Bloomfield, Esq. and against Plaintiff, Dermot MacShane, in the amounts of \$20,143.19 and \$10,249.00 for a total of \$30,392.19; and it is further

ORDERED and ADJUDGED that an interest in the property of Plaintiff, Dermot MacShane, to the extent of \$30,392.19, be awarded in favor of Marshall E. Bloomfield, Esq., pursuant to NYCRR §202.16(c)(2)."

- 10) The aforesaid lien on the interest of the property of Respondent-Judgment Debtor Dermot MacShane, remains unpaid and unreduced except for the sum of \$4,800.00 paid by Respondent-Judgment Debtor's then employer, the New York City Police Department, said payments made as a result of an Order of this Court made the 12<sup>th</sup> day of December, 2005, and entered the 13<sup>th</sup> day of December, 2005, a copy of which is annexed hereto and made a part hereof, and marked EXHIBIT E.



- 11) There remains, to date, with statutory interest, unpaid and outstanding, on Petitioner-Judgment Creditor's lien on the property of Respondent-Judgment Debtor the outstanding sum of \$31,855.89.
- 12) Respondent, Sergeant's Benevolent Association Annuity Fund, is a necessary party hereto in that it is in possession of property of Respondent-Judgment Debtor in an amount believed to be, upon information and belief, in excess of twenty thousand (\$20,000.00) dollars. Said Respondent claims that such property constitutes exempt property as that term is defined by CPLR §5205.
- 13) Respondent, The City of New York Police Pension Fund, is a necessary party hereto, in that it is in possession of property of Respondent-Judgment Debtor in an amount believed to be, upon information and belief, in excess of ninety thousand (\$90,000.00) dollars. Said Respondent claims that such property constitutes exempt property as that term is defined by CPLR §5205.
- 14) Respondent, The Fund Office of Local 580 of Architectural and Ornamental Iron Workers, is a necessary party hereto, in that it is in possession of property of Respondent-Judgment Debtor in an amount believed to be, upon information and belief, amounting to \$59,804.80 (see EXHIBIT F annexed). Upon information and belief, said Respondent claims that such property constitutes exempt property as that term is defined by CPLR §5205.
- 15) The CPLR §5205 exemption of property from levy and sale upon execution of a judgment creditor does not preclude the foreclosure of a lien resulting from a security interest given upon said property.
- 16) Upon information and belief the underlying matrimonial action has been concluded.
- 17) There has been no prior application for the relief herein sought.

**WHEREFORE**, Petitioner-Judgment Creditor prays for the grant of such relief, as follows:

- a. against Respondent-Judgment Debtor, Dermot MacShane, judgment foreclosing Petitioner-Judgment Creditor's 22 NYCRR §202.10(c)(2) lien;

- b. against Respondent, Sergeant Benevolent Association Annuity Fund, an Order directing the payment of all monies in their possession constituting personal property of Respondent-Judgment Debtor to which a security interest has attached and a 22 NYCRR §202.16(c)(2) lien has attached, up to the sum of \$31,855.89 in satisfaction of said lien;
- c. against Respondent, The City of New York Pension Fund, an Order directing the payment of all monies in their possession, constituting personal property of Respondent-Judgment Debtor to which a security interest has attached and a 22 NYCRR §202.16(c)(2) lien has attached, up to the sum of \$31,855.89 in satisfaction of said lien;
- d. against Respondent, Fund Office of Local 580 of Architectural and Ornamental Iron Workers, an Order directing the payment of all monies in their possession, constituting personal property of Respondent-Judgment Debtor to which a security interest has attached, up to the sum of \$31,855.89 in satisfaction of said lien; and
- e. an Order and Judgment granting to Petitioner-Judgment Creditor herein such other and further additional relief as to this Court may seem just, proper, and equitable.

Dated: Bronx NY  
May 3, 2007

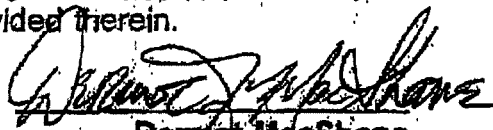
Yours, etc.  
MARSHALL E. BLOOMFIELD  
Petitioner-Judgment Creditor Pro Se  
349 E. 149<sup>th</sup> Street  
BX NY 10451  
718-665-5900

STATE OF NEW YORK )  
COUNTY OF THE BRONX ss: )

Dermot MacShane, being duly sworn, deposes  
and says:

(1) I hereby acknowledge my indebtedness to  
my Attorney, Marshall E. Bloomfield, Esq., as set forth  
in the Liabilities Section of my Net Worth Affidavit  
dated 4/15/04 in §H.1.2a.

(2) I hereby consent to the extent of such  
indebtedness to assign an interest in that property  
accruing to me upon the final disposition of the  
equitable distribution phase of the action and in  
accordance with NYCRR §202.16(c)(1)(2) and subject  
to Court approval as provided therein.

  
Dermot MacShane

Sworn to before me this 15  
day of April, 2004.

151

**COPY**

MARSHALL E. BLOOMFIELD  
Notary Public, State of New York  
No. 02BL032530  
Qualified in the County of The Bronx  
Commission Expires June 30, 2007

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF PUTNAM**

\_\_\_\_\_  
Marshall E. Bloomfield,

Petitioner-Judgment Creditor

-against-

Dermot MacShane,

Respondent-Judgment Debtor

Sergeant's Benevolent Association Annuity Fund,  
The City of New York Police Pension Fund, and the  
Fund Office of Local 580 of Architectural and  
Ornamental Iron Workers,

\_\_\_\_\_  
Respondents

Index No:

Purchased

**969/2007**

**PETITIONER-  
JUDGMENT  
CREDITOR'S  
MEMORANDUM OF  
LAW IN SUPPORT OF  
THE PETITION**

**STATEMENT OF FACTS**

Petitioner-Judgment Creditor herein was the former Attorney for Dermot MacShane, Respondent-Judgment Debtor herein, in respect to a certain Matrimonial Action commenced in the Supreme Court of the State of New York, County of Putnam, and entitled Dermot MacShane, Plaintiff, -against- Judie MacShane, Defendant, and bearing Index Number 1798/02.

In accordance therewith, and due to an outstanding indebtedness owed Petitioner-Judgment Creditor by Respondent-Judgment Debtor in the form of outstanding Attorney's fees, Respondent-Judgment Debtor executed an acknowledgement of such indebtedness, and an assignment of a security interest, and the attachment of a lien upon his personal property to secure the payment thereof (EXHIBIT A on the Petition).

The foregoing acknowledgement, assignment of a security interest, and subsequent lien attachment were all pursuant to, and in accordance with, 22 NYCRR §202.16[c](2).

Subsequent to the execution of the foregoing, Petitioner-Judgment Creditor herein moved this Court by Order to Show Cause for:

- a) permission to withdraw as Counsel for Mr. MacShane; and
- b) Court approval of Petitioner-Judgment Creditor's interest in the property of Mr. MacShane.

Said motion was brought on by Order to Show Cause dated June 1<sup>st</sup>, 2004, and signed by Hon. Justice Fred L. Shapiro (EXHIBIT B on the Petition).

The aforesaid motion was originally made returnable on the 21<sup>st</sup> day of June, 2004, and subsequently adjourned to July 7, 2004, August 12, 2004, and finally to October 6, 2004, at which time it was heard, submitted, and disposed of by a grant of the motion (EXHIBIT C on the Petition).

At that time, Mr. MacShane not only acknowledged the Court's grant of the lien, but furthermore acknowledged once again his consent to the same, stating on the transcribed Record: "I'm agreeing to the lien." (EXHIBIT C on the Petition @ page "22").

Subsequent thereto, the Court made and entered a Judgment in favor of Petitioner-Judgment Creditor herein, and against Respondent-Judgment Debtor in the amount of \$30,392.19. (EXHIBIT D on the Petition).

The aforesaid Judgment further provided for a security interest in favor of Petitioner-Judgment Creditor upon the personal property of Respondent-Judgment Debtor.

There currently remains unpaid on the security interest lien the outstanding sum of \$31,855.89.

The named Respondents are necessary parties to the Proceeding in that, upon information and belief, they are in possession of personal property to which Petitioner-Judgment Creditor's security interest and resultant lien has attached.

However, said Respondents, upon information and belief, have taken the position that said personal property in their possession constitutes exempt property pursuant to CPLR §5205.



**POINT I**

RESPONDENTS'S RELIANCE UPON CPLR §5205  
IS MISPLACED. RESPONDENT-JUDGMENT DEBTOR'S  
PROPERTY IN POSSESSION OF SAID  
RESPONDENTS IS NOT SUBJECT TO ANY  
CPLR §5205 EXEMPTION AND IS SUBJECT  
TO PETITIONER-JUDGMENT CREDITOR'S  
22 NYCRR §202.16[c](2) SECURITY INTEREST  
AND LIEN

22 NYCRR §202.16[c](2) provides:

"An attorney seeking to obtain an interest in any property of his  
or her client to secure payment of the attorney's fee shall make  
application to the court for approval of said interest..." (emphasis  
supplied).

After securing the acknowledgement and consent of the Respondent-Judgment  
Debtor, said application was made to the Court, and granted by the Court, both by an  
ensuing transcribed Decision and Order, and a resultant Judgment.

The existence of such lien was acknowledged by Respondent-Judgment Debtor  
on the Record, and his consent to the same was likewise acknowledged.

Respondent-Judgment Debtor has personal property in the form of annuities and  
pension funds, which said named Respondents claim to constitute exempt funds  
pursuant to CPLR §5205.

CPLR §5205 provides in pertinent part:

"The following personal property is exempt from application to the  
satisfaction of a money judgment, except such part as a court  
determines to be unnecessary for the reasonable requirements of  
the judgment debtor and his dependents:

1. ninety per cent of the income or other payments from a trust the principal of which is exempt under subdivision [c]; provided, however, with respect to any income or payments made from trusts, custodial accounts, annuities, insurance contracts, monies, assets or interest established as part of a Keogh (HR-10), retirement or other plan described in paragraph two of subdivision [c] of this section, the exception in this subdivision for such part as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his dependents shall not apply, and the ninety percent exclusion of this paragraph shall become a one hundred percent exclusion."

CPLR §5205, subdivision [c] as referred to hereinabove additionally provides in

pertinent part:

- "1. Except as provided in paragraphs four and five of this subdivision, all property while held in trust for a judgment debtor, where the trust has been created by, or the fund so held in trust has proceeded from, a person other than the judgment debtor, is exempt from application to the satisfaction of a money judgment.
2. For purposes of this subdivision, all trusts, custodial accounts, annuities, insurance contracts, monies, assets or interests established as part of, and all payments from, either a Keogh (HR-10), retirement or other plan established by a corporation, which is qualified under section 401 of the United States Internal Revenue Code of 1986, as amended, or created as a result of rollovers from such plans pursuant to sections 402(a)(5), 403(a)(4), or 408(d)(3) of the Internal Revenue Code of 1986, as amended, shall be considered a trust which has been created by or which has proceeded from a person other than the judgment debtor, even though such judgment debtor is (i) a self employed individual, (ii) a partner of the entity sponsoring the Keogh (HR-10) plan, or (iii) a shareholder of the corporation sponsoring the retirement or other plan.

3. All trusts, custodial accounts, annuities, insurance contracts, monies, assets, or interests described in paragraph two of this subdivision shall be conclusively presumed to be spendthrift trusts under this section and the common law of the state of New York for all purposes, including, but not limited to, all cases arising under or related to a case arising under sections one hundred one to thirteen hundred thirty of title eleven of the United States Bankruptcy Code, as amended."

It is respectfully submitted that Respondents' collective reliance upon the aforesaid statutory exemption from execution and levy upon such assets in satisfaction of a judgment lien is both misplaced, erroneous, and contrary to the law of the State of New York as espoused by the Court of Appeals in the case of In the Matter of the State of New York v. Avco Financial Service of New York, Inc., 50 N.Y.2d 383, 429 N.Y.S.2d 181.

In Avco, *supra*, the Court of Appeals held that "the fact that the law exempts such property from levy and sale upon execution by a judgment creditor does not mean that the exemption statute was intended to serve the far more paternalistic function of restricting the freedom of debtors to dispose of these possessions as they wish."

In so holding, the Court stated at pages "387-388":

"It is well recognized, however, that simply because the law exempts such property from levy and sale upon execution by a judgment creditor does not mean that the exemption statute was intended to serve the far more paternalistic function of restricting the freedom of debtors to dispose of these possessions as they wish (see *Montfort v. Grohman*, 36 NC App 733; *Mutual Loan & Thrift Corp. v. Corn*, 182 Tenn 554, *Swan v. Boumes*, 47 Iowa 501, 503; 1 Jones, *Chattel Mortgages and Conditional Sales* [6<sup>th</sup> Ed], §114). No statute precludes exempt property from being sold; nor is there any which expressly interdicts the less drastic step of encumbering such property. So, for example, while contractual waivers of a debtor's statutory exemptions are usually held to be

void (see *Caravaggio v. Retirement Bd. Of Teachers' Retirement System*, 36 NY2d 348, 357-358; *Kneetle v. Newcomb*, 22 NY 249), the law has not forbidden a debtor to execute a mortgage upon the property so protected and thus create a lien which may be foreclosed despite the property's exempt status (see *Banking Law*, §356 [governing security interests in household furniture]; *Uniform Commercial Code*, §9-102, subd. [1]; *Matter of Brooklyn Loan Corp. v. Gross*, 259 App. Div. 165, 166; *Emerson v. Knapp*, 129 App Div 827; 8 Weinstein-Korn-Miller, NY Civ Prac, par 5205.7)."

Accordingly, it is respectfully submitted that herein (as in Avco) Respondents' reliance upon the statutory exemption of CPLR §5205 exempting property from execution and levy by a judgment creditor is totally misplaced, unfounded, and inapplicable to any security interest and resultant lien granted by the Debtor-Property Owner, and that accordingly Petitioner-Judgment Creditor's instant Petition should in all respects be granted in its entirety.

Respectfully submitted,



MARSHALL E. BLOOMFIELD, ESQ.

Index No.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF PUTNAM

---

Marshall E. Bloomfield,

Petitioner-Judgment Creditor

-against-

Dermot MacShane.

Respondent-Judgment Debtor

And

Sergeant's Benevolent Association Annuity Fund, The City of New York Police Pension Fund, and the Fund Office of Local 580 of Architectural and Ornamental Iron Workers.

Respondents.

---

PETITIONER'S MEMORANDUM OF LAW IN SUPPORT  
OF ORDER TO SHOW CAUSE, VERIFIED PETITION,  
AND SUPPORTING DOCUMENTS

---

LAW OFFICES OF  
MARSHALL E BLOOMFIELD, ESQ

Attorney for Plaintiff

*Office, Post Office Address and Telephone*

349 E 149<sup>th</sup> ST  
BX, NY 10451-5603  
(718) 665-5900  
(212) 662-1870

---

To:

Attorney(s) for Defendant 8810M

---

3) An order granting to Movant such other and further additional relief as to this Court may seem just, proper, and equitable.

Sufficient reason appearing therefore ~~for~~ <sup>hearing</sup> all proceedings relating to the above captioned matter ~~be~~ <sup>shall</sup> be stayed pending the ~~hearing and determination~~ of the instant motion;

Sufficient reason appearing therefore ~~for~~ service of a copy of this Order upon Dermot MacShane, by personal delivery to him, on or before the <sup>8<sup>th</sup></sup> day of June, 2004, ~~shall~~ be deemed good and sufficient service and notice thereof;

Sufficient reason appearing therefore ~~for~~ service of a copy of this Order upon Defendant, Judie MacShane, by service upon her Attorney, Elizabeth Hudak, 38 Gleneida Avenue, Carmel, NY 10512 by certified mail, return receipt requested on or before the <sup>4<sup>th</sup></sup> day of June, 2004, ~~shall~~ be deemed good and sufficient service and notice thereof.

<sup>and defendant</sup>  
Plaintiff Dermot MacShane, and counsel for both parties shall appear on the return date of this motion.

Enter Fred L. Shapiro  
Hon. Fred L. Shapiro ~~clerk~~  
A.J.S.C.



05/28/2007 23:34 2129475719

LOCAL580 FUNDS

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF PUTNAM

-----x  
DERMOT MACSHANE,

Plaintiff,

INDEX NO.

1798/2002

-against-

JULIE MACSHANE,

Defendant.  
-----x

Putnam County Courthouse  
40 Gleneida Avenue  
Carmel, New York 10512  
October 6, 2004

BEFORE:

HON. FRED L. SHAPIRO,  
Acting Justice of the Supreme Court.

APPEARANCES:

MARSHALL E. BLOOMFIELD, ESQ.  
Attorney for the Plaintiff  
349 E. 149th Street  
Bronx, New York 10451  
AND: WILLIAM KNOESEL  
Law Assistant.

BERKMAN & HUDAK, ESQS.  
Attorneys for the Defendant  
38 Gleneida Avenue  
Carmel, New York 10512  
BY: ELIZABETH HUDAK, ESQ.

MARY C. TRAYNOR  
Senior Court Reporter



2

CONFERENCE

THE CLERK: MacShane versus

MacShane.

THE COURT: Can you please  
call Ms. Hudak? I think we should  
call Ms. Hudak. I have a feeling that  
it's settled.

SECOND CALL:

THE CLERK: On the MacShane  
matter, confirms matter was adjourned  
to today and she writes Mr. Bloomfield  
would greatly appreciate if this  
adjournment can be calendared for  
11:30 a.m., since he may be engaged in  
the last day of Court ordered  
depositions in the matter.

THE COURT: We'll wait until  
11:30.

THIRD CALL:

THE COURT: Let the record  
indicate that I had some  
off-the-record discussions with  
counsel in an ongoing attempt to  
resolve this matter.

Mr. Bloomfield has advised

3

## CONFERENCE

the Court that after the off-the-record discussion and counsel speaking to their clients, it became apparent that this matter is not going to be resolved.

Mr. Bloomfield had made motion some time ago to be relieved as counsel. And the Court adjourned it, in order that Mr. Bloomfield would have an opportunity to attempt to resolve this matter.

And I want to say for the record, I'm very much impressed that Mr. Bloomfield could have walked in here on a return date and, frankly, I would have granted the motion at that time, had he not decided to stick it out, though he was not getting paid and attempted to work this out.

Unfortunately the case could not be resolved and Mr. Bloomfield has now asked me to decide the motion that he made.

I'm going to grant his

4  
CONFERENCE

1  
2 application. I'm going to relieve him  
3 as counsel. I'm going to grant him a  
4 retaining lien and he'll provide me  
5 with an affidavit served on both Ms.  
6 Hudak and Mr. MacShane, as to the fees  
7 brought up-to-date.

8 I have the fees up to the  
9 date of the motion. I need from the  
10 date, return date of the motion  
11 forward and the Court would be  
12 inclined to grant that as well.

13 You may be heard on the  
14 issue. Not as to whether he should  
15 have the lien, Mr. MacShane. You  
16 shall be heard on whether the fees are  
17 reasonable and necessary. That's the  
18 only argument you can make, that the  
19 fees were not reasonable or necessary  
20 for this case, but he does not have to  
21 turn over the file until that lien is  
22 resolved.

23 I further indicated that I'm  
24 going to give you an opportunity to  
25 attain a new attorney and I'll give

05/28/2007 23:34 2129475719

LOCAL 580 FUNDS

5

## CONFERENCE

1  
2 you through and including November 5th  
3 to obtain a new attorney. You'll be  
4 back in court. We're going to bring  
5 this back on November 17th at 9:30, to  
6 take -- to hear, to decide how best  
7 to proceed once you have an attorney.

8 But keep in mind if you do  
9 not retain a new attorney you will be  
10 proceeding without counsel and I'll  
11 hold you to the same standard as an  
12 attorney. I can't lower the standard,  
13 even though I'm aware that you're not  
14 an attorney. I will explain whatever  
15 I feel is appropriate, without  
16 crossing a line and giving you legal  
17 advice, but I will advise you as to  
18 what's going on and the nature of the  
19 proceeding.

20 Mr. Bloomfield, do you wish  
21 to be heard?

22 MR. BLOOMFIELD: Just for a  
23 second, to point out to the Court that  
24 the Order to Show Cause dated the  
25 first day of June, 2004, asked for two

10/6/04

05/28/2007 23:34

2129475719

LOCAL580 FUNDS

6  
CONFERENCE

1  
2 forms of relief; an order permitting,  
3 granting myself leave to withdraw and  
4 the Court has just indicated it would  
5 grant that.

6 The second one was an order  
7 approving movant's interest, my  
8 interest, in the property of the  
9 Plaintiff, Dermot MacShane, pursuant  
10 to NYC 2d 2002.16.2 and attached to  
11 the moving papers was an  
12 acknowledgment of my interest in his  
13 property as set forth and his net  
14 worth affidavit and consenting.

15 THE COURT: Let me say this  
16 to you: I'm going to grant that to  
17 the extent there will be no  
18 distribution of any assets to Mr.  
19 MacShane without you being heard.

20 And it would be my intention  
21 to give you your fee off the top of  
22 any distribution.

23 MR. BLOOMFIELD: Thank you.

24 THE COURT: Again, there  
25 will be another judge here. If you



LOCAL 580 FUNDS

05/28/2007 23:34 2129475719

7

## CONFERENCE

1  
2 submit this to me. I'll make sure the  
3 other judge sees it. Before anything  
4 can be distributed to you, Mr.  
5 Bloomfield is entitled to have his fee  
6 paid.

7 MR. MACSHANE: Can I have a  
8 copy? I was never served.

9 THE COURT: You had to, to  
10 be here.

11 MR. MACSHANE: Your Honor, I  
12 was not.

13 THE COURT: I'll ask Mr.  
14 Bloomfield to provide you with another  
15 copy.

16 MR. BLOOMFIELD: Absolutely  
17 and it was served.

18 THE COURT: I have an  
19 affidavit of service and it was here  
20 on the return date, I believe you had  
21 it. Doesn't matter. I'm going to get  
22 you a new one. I'm not going to say  
23 too bad.

24 MR. MACSHANE: He showed it  
25 to me at that time.

10/6/04

05/28/2007 23:34 2129475719

LOCAL580 FUNDS

## CONFERENCE

THE COURT: Doesn't matter.

You're going to get it.

MR. MACSHANE: One other question. How do I proceed? I'm beyond destitution as it stands.

THE COURT: Let me say this.

MR. MACSHANE: Such a thing --

THE COURT: What is your salary?

MR. MACSHANE: \$80,000 a year.

THE COURT: Nobody is going to grant you poor person relief making \$80,000.

MR. MACSHANE: After child support and other obligations --

THE COURT: If you want to make an application, get in touch with Judge Nicolai's office and they'll make short visit. On an \$80,000 income there is no way in the world they will assign an attorney to you.

Ms. Hudak, do you wish to be heard?

05/28/2007 23:34

2129475719

LOCAL 580 FUNDS

9

~~CONFERENCE~~

MS. HUDAK: Couple of things.

I want to make sure my client is aware of the fact during what you have done is a stay period for anymore proceedings. That we are going to be filing contempt motion in this matter and I need for my client to know that I will not be able to do so during this period of time, though I have assured her one will be forthcoming once the period of time is up. If we can clarify the date when I can bring the same?

THE COURT: The stay was up and including November 5th. And if you bring in an Order to Show Cause to me on November 8th, I'll make it returnable on the 17th.

Let me say this to you; I take those contempts very seriously. If you're not current, I'll probably do a hearing that day. And keep in mind if I find that you willfully violated, with or without an attorney.

05/28/2007 23:34 2129475719

LOCAL580 FUNDS

10

## CONFERENCE

you're not going out that way. You go right to the County Jail.

MR. MACSHANE: I understand that.

Last thing, arrears of \$60.

THE COURT: Well, I don't know what it is, but I'm not even saying you're in arrears. I only put people in jail that willfully violate my orders and I do a hearing, but I have a feeling I'll do the hearing either that day or the next day.

So, be prepared and let counsel know, because I'm not going to -- I don't let anybody violate orders. If you haven't violated the order or you owe something like \$60, no way in the world I'm putting you in jail. You'll walk out. I didn't say if they bring the motion you'll go to jail. I'll take testimony and they have to prove it by clear and convincing evidence. You don't have to say anything and you could prevail.

05/28/2007 23:34 2129475719

LOCAL580 FUNDS

11

## CONFERENCE

1  
2 You have to prevail in the case. If  
3 they show all the money, number one,  
4 you can argue you don't owe it, which  
5 is of course a complete defense or  
6 that failure to pay was not willful,  
7 but once, if I find it's willful, you  
8 go to jail until you pay what's owe  
9 and six months is a long time to sit  
10 in there.

11 MS. HUDAK: Additionally, to  
12 make certain Mr. MacShane is very  
13 clear, that the pendente lite order of  
14 the Honorable John W. Sweeney, Jr., is  
15 in effect.

16 THE COURT: That order has  
17 to be complied with, I never vacated  
18 it. You're aware that whatever Judge  
19 Sweeney had in that order, you're  
20 supposed to be in compliance with.

21 MR. MACSHANE: It's  
22 impossible.

23 THE COURT: Wait. Are you  
24 aware that it's still in effect and  
25 nothing happens to that order by

05/28/2007 23:34 2129475719

LOCAL580 FUNDS

12

## CONFERENCE

anything that I did today?

MR. MAGSHANE: Yes.

THE COURT: So, if they show that you are not in compliance, then you have to come forth and show, I'm not in compliance, but it's not willful. If I disagree with you or I find for argument's sake you should have paid more than you did, it's going to be jail until you, you know you don't get time to go get the money.

So, if you could somehow raise the money and they document it so, I would strongly suggest that you do so, because I don't like sending people to jail, I abhor it, but I find that other than one case over ten years, every person I put in jail within two to three days, every single penny has appeared and the other person had the money and basically was spitting in my face and said to me, I got it and I'm not paying it, so he



05/28/2007 23:34 2129475719

LOCAL580 FUNDS

13

## CONFERENCE

1  
2 wanted to sit there for six months.  
3 Wasn't much I could do.

4 MR. MACSHANE: Your Honor, I  
5 never had the money.

6 THE COURT: They have to  
7 prove. This is the order and this is  
8 what you paid and then you have the  
9 burden of coming forward and saying  
10 yes, I paid it, and if you paid it  
11 it's over or no, I didn't, but it  
12 wasn't willful.

13 There is three choices. I  
14 can either say you're cleared, none of  
15 this was willful, or I could say,  
16 well, he ordered you to pay X dollars  
17 you couldn't afford X, but you could  
18 afford Y, so you go to jail until Y is  
19 paid, or I could say, no, they have  
20 established that you didn't comply  
21 with the order and I don't see any  
22 reason why you couldn't comply and  
23 then you go to jail. It's six months  
24 sentence. I want you to know that.  
25 but keep in mind you have the key. If

10/5/04

05/28/2007 23:34

2129475719

LOCAL 580 FUNDS

14

## CONFERENCE

you make payment, I open the jail door that day. I don't keep people in there to punish them. The sole purpose of this is to coerce compliance.

MS. HUDAK: Your Honor, order, among other items I would ask Mr. MacShane now that he is currently unrepresented by counsel to review that order, to make certain that he's aware of the fact that among other items in the order, he owes Mrs. MacShane the sum of 1,000 a month as and for maintenance, which hasn't been paid for some time. At a minimum now he needs to review that minimum payments on credit cards, etcetera, those are the items I'm speaking about, but I would ask that Mr. MacShane review that order, you know, in expectation of receiving contempt motion.

Thank you, your Honor.

MR. MACSHANE: Excuse me,

15

## CONFERENCE

your Honor, anything that preempts such motion that it's frivolous and false, because all of my cards are on the table.

THE COURT: Listen to me. You can argue that it's frivolous in your opposition papers. I'll listen to both sides.

MR. MACSHANE: To preempt.

THE COURT: How can I know something before I read the papers?

MR. MACSHANE: From the paperwork that the defense attorney has, that they would know there is no way that I have this money, nor do I have the assets. It's been known since before I lost my house, your Honor.

THE COURT: You can argue that.

MR. MACSHANE: Nothing to preempt.

THE COURT: You couldn't preempt anything. Law doesn't permit

10/6/04

16  
CONFERENCE

1  
2 that. After the fact if I find it's  
3 frivolous, I can say this was  
4 frivolous and I could sanction them up  
5 to \$10,000.

6 But let me say this to you:  
7 I know Ms. Hudak a long time and I've  
8 never known her to make frivolous  
9 motions. I've known her to make  
10 motions which I have denied, but never  
11 frivolous.

12 MR. MACSHANE: This is  
13 frivolous.

14 MS. HUDAK: My motion for  
15 contempt would be frivolous, just so  
16 that I can clarify.

17 MR. MACSHANE: Practically  
18 criminal.

19 MS. HUDAK: If I may, we're  
20 not revisiting Judge Sweeney's  
21 pendente lite.

22 THE COURT: His argument is  
23 that he can't comply with it, you  
24 know, not that he's defying, he can't  
25 comply and I'll find that out.

## CONFERENCE

As a matter of fact, you know what you could do, make motion returnable by Order to Show Cause on November 15th. I'll come in November 15th and set it down for an order that week for hearing so you be prepared to go the 17th -- 16, 17th, 18th or 19th. No?

MS. HUDAK: That would be when the trial would be.

THE COURT: Hearing on the contempt, I want to do it before I go.

MR. BLOOMFIELD: For the record, I'm gone.

THE COURT: You're gone as of now.

If you come in without an attorney, I can almost guarantee the result, you know. This is a very serious matter and, you know, I would like to -- I don't want you losing because you don't have an attorney who can articulate the law and argue and examine witnesses. I don't think

10/6/04

18  
CONFERENCE

1  
2 you're capable of doing that. No way  
3 I would be capable of doing your job  
4 and not any disrespect. If you don't  
5 have an attorney, it's going to be  
6 very difficult for you to prevail.

7 I'll say this to you, if I  
8 were you, I would get an attorney real  
9 quickly. I don't know, let that  
10 attorney review what was done and I  
11 have a feeling that --

12 MR. MACSHANE: If I had the  
13 money.

14 THE COURT: Let me finish.  
15 I have a feeling they'll come to the  
16 same conclusion Mr. Bloomfield did.  
17 the proposed settlement was fair and  
18 reasonable with what I said today to  
19 them and you could avoid the whole  
20 mess.

21 I think what you are doing  
22 is, again, I did think it's in good  
23 faith, I'm not going to argue that and  
24 Mr. Bloomfield was very clear that he  
25 understands your reasoning, but if you

19

## CONFERENCE

1  
2 were a business person and I said, if,  
3 you go this route you're going to lose  
4 a lot of money. If you go this route  
5 you'll lose a lot of money and you  
6 said I'm a man of principles, I would  
7 rather lose the money. Wait, I'm  
8 using that as analogy. Not saying  
9 it's what you have done. I can almost  
10 guarantee if you don't have an  
11 attorney, this is going to turn out  
12 much worse than a settlement. If you  
13 have an attorney, I would want them to  
14 exercise independent judgment. I  
15 wouldn't be surprised if they came to  
16 the same conclusion Mr. Bloomfield  
17 did. You're digging in, spinning your  
18 wheels and you'll end up hurting  
19 yourself. And the reason is that I'm  
20 not going to be the judge that decides  
21 it and I'm not going to discuss this  
22 with the new judge, but you're going  
23 to be very unhappy if you push this to  
24 the limit.

25 I think you're making a



05/28/2007 23:34

2129475719

LOCAL580 FUNDS

20

## CONFERENCE

1  
2 terrible mistake and that's my advice  
3 as best I can give it to you and  
4 because I don't want to see you end up  
5 in jail and I don't want to see  
6 decision by another judge that  
7 financially hurts you more than you  
8 would have been had you gone along  
9 with the settlement and you better  
10 sleep on it.

11 Mr. Bloomfield did a great  
12 job for you and I have to tell you I  
13 didn't know him before this and I  
14 never saw anybody so tenacious that  
15 wasn't getting paid and sticking up  
16 for you every turn. And because the  
17 easy thing for him would have been to  
18 say, look, I can't settle it, I'll  
19 walk away now, he didn't, he stuck in.  
20 As difficult as it was, you should be  
21 grateful for him and I have tremendous  
22 respect for Mr. Bloomfield.

23 MR. BLOOMFIELD: Just I have  
24 to, I may not agree with everything  
25 that the Court said about me, but

21

## CONFERENCE

there is one thing that's obvious to both counsel, the amount of effort that you, this Court, put in, the time this Court put into attempting resolution is extraordinary. And a lot of it was off the record in chambers, trying to work things out. Number of hours and the efforts and constructive nature of it, from my point of view and I've been practicing over 36 years, extraordinary. I've never experienced anything that was more than that effort and I wish to thank the Court for that.

And I also wish to say that I hope that the parties do resolve this as soon as possible and I know it behooves both of them to do so.

THE COURT: I agree completely with that and I just hope that it can be done during this interim period, that something be done to resolve it. If not, we'll go forward and the I think contempt

22

## CONFERENCE

1 motion will decide a lot of this case.  
2 one way or the other and that's why I  
3 wanted to do a hearing before you at  
4 least the bench and I'm clearly, that  
5 whole week I know I can get it done.  
6

7 MR. BLOOMFIELD: Thank you,  
8 your Honor.

9 MS. HUDAK: And obviously Mr.  
10 Bloomfield is always eloquent and we  
11 join in his sentiment.

12 MR. MACSHANE: In light of  
13 the lien on the property, do I have  
14 access to my file?

15 THE COURT: No. Until you  
16 either pay the bill or I set the lien,  
17 if you want to agree to the lien I'll  
18 have him send the file over, but in no  
19 event will any money go to you, but  
20 I'm not going to lift the lien on any  
21 property.

22 MR. MACSHANE: I'm not  
23 looking for a lift on the lien. I'm  
24 agreeing to the lien.

25 THE COURT: Do you want to

05/28/2007 23:34 2129475719

LOCAL580 FUNDS

23

## CONFERENCE

know the amount?

MR. MACSHANE: I don't.

THE COURT: I don't think  
Mr. Bloomfield does.

MR. MACSHANE: Couldn't that  
be settled a later date.

THE COURT: Law requires at  
least the lien be set before the file  
is turned over. Not paid, but set.

MR. MACSHANE: Okay.

THE COURT: If you agree  
with Mr. Bloomfield, he'll send a  
stipulation. I'll so order and you  
get the file, but right off the top  
but --

MR. MACSHANE: I'm in over my  
head.

THE COURT: I think so, too.

o o o

Certified to be a true and correct  
transcript.

*Mary C. Traynor*  
Mary C. Traynor,  
Senior Court Reporter

10/6/04



COPY

At the Supreme Court,  
State of New York held in  
and for the County of  
Putnam, at the Courthouse  
located at 40 Glenelg  
Avenue, Carmel, New York  
10512, on the 15<sup>th</sup> of  
June, 2004

PUTNAM COUNTY  
CLERK  
2005 JAN -6 PM 2:46

Hon. Andrew P. O'Rourke  
Presents: Supreme Court Justice  
~~Hon. Fred L. Shapiro, J.S.C.~~

Dermot MacShane,,

Plaintiff(s),

-against-

Index No.: 1798/02

Judie MacShane,

Defendant(s).

JUDGMENT

An Order to Show Cause having previously been submitted to this Court and  
signed by Hon. Fred L. Shapiro on the 1st day of June, 2004; and

Said Order to Show Cause having sought the following enumerated items of  
relief:

- 1) An order permitting and allowing Marshall E. Bloomfield, Esq. leave  
to withdraw as Counsel for Plaintiff, Dermot MacShane; and
- 2) An order approving Counsel Fees and Disbursements Incurred up  
through and including May 24, 2004, in the amount of \$20,143.19; and
- 3) An order approving an interest of Marshall E. Bloomfield, Esq., in the  
property of Plaintiff, Dermot MacShane, pursuant to NYCRR §202.16(2); and

The above captioned matter having come on before this Court on July 7, 2004,  
August 12, 2004, and October 6, 2004; and

The Court having read the Affirmation of Marshall E. Bloomfield, Esq., dated  
May 28, 2004, and submitted in support of the motion; and

The Court on October 6, 2004, having granted the motion in its entirety; and  
The Court on October 6, 2004, having directed the submission of a  
Supplemental Affirmation of Services on Notice; and

The Court having read the Supplemental Affirmation of Marshall E. Bloomfield,  
Esq., dated October 29, 2004; and

The Court by Decision and Order dated November 18, 2004, having granted  
the Supplemental Application for Counsel Fees and Disbursements in the additional  
amount of \$10,249.00; and

The Court by Decision and Order dated November 18, 2004, having directed  
the Settlement of a Judgment on five days Notice;

NOW upon motion of Marshall E. Bloomfield, Esq., it is hereby

ORDERED and ADJUDGED that Judgment be made and entered herein in  
favor of Marshall E. Bloomfield, Esq. and against Plaintiff, Dermot MacShane, in the  
amounts of \$20,143.19 and \$10,249.00 for a total of \$30,392.19; and it is further

ORDERED and ADJUDGED that an interest in the property of Plaintiff, Dermot  
MacShane, to the extent of \$30,392.19, be awarded in favor of Marshall E.  
Bloomfield, Esq., pursuant to NYCRR §202.16(2); and it is further

ORDERED and ADJUDGED that Marshall E. Bloomfield, Esq., have execution  
thereon.

ENTER

J.S.C.

Hon. Andrew P. O'Rourke  
Supreme Court Justice

Entered January 6, 2005



## AMENDED DECISION AND ORDER

To commence the statutory period of appeals as of right CPLR (5515 (a)), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
IAS PART, PUTNAM COUNTY

Present: Hon. Andrew P. O'Rourke  
Supreme Court Justice

-----X  
MARSHALL E. BLOOMFIELD, ESQ.,

Petitioner-Judgment Creditor,

-against-

DERMOT MACSHANE,

Respondent-Judgment  
Debtor,

-and-

JUDITH MACSHANE

Respondent,

-and-

SERGEANTS BENEVOLENT ASSOCIATION ANNUITY  
FUND, THE CITY OF NEW YORK POLICE PENSION  
FUND, FUND OFFICE OF LOCAL 580 OF  
ARCHITECTURAL AND ORNAMENTAL IRON  
WORKERS, ALLSTATE FINANCIAL SERVICES, HSBC,  
CITIBANK, NEW YORK CITY POLICE DEPARTMENT,  
WACHOVIA /ka FIRST UNION,

PUTNAM COUNTY  
CLERK

2005 DEC 13 AM 9:19

INDEX NO.: 2022/2005  
MOTION  
DATE: 11/21/05

RESPONDENTS-  
GARNISHEES

X

The following documents numbered 1 to 6 read on this motion by Petitioner to Garnish Dermot MacShane's pension and assets to satisfy a judgment.

Notice of Motion- Affidavits 1, 2  
Answering Affidavits 5, 6  
Replying Affidavits  
Affidavits  
Pleadings-Exhibits-Stipulations-Minutes 4, 4  
Briefs: Plaintiff  
Defendant

Motion is decided as follows:

Petitioner obtained a judgment against the Judgment-Debtor Dermot MacShane in the sum of \$30,392.19. Petitioner seeks to collect said judgment from the respondent-Garnishees Sergeants Benevolent Association Annuity Fund, the City of New York Police Pension Fund, Fund Office of Local 580 of Architectural and Ornamental Iron Workers, Allstate Financial Services, HSBC, Citibank, New York Police Department and Wachovia ~~via~~ First Union., all of whom have moneys belonging to Respondent-Debtor Dermot MacShane.

Petitioner seeks a judgment pursuant to CPLR 5225(b) and CPLR 5227 ordering the turnover of property held by the Respondent-Garnishee to the Petitioner Judgment Creditor sufficient to satisfy the outstanding judgment. Petitioner further alleges Dermot MacShane is employed by the New York City Police Department holding the rank of Sergeant for an annual salary of \$75,070 against which there are no liens or judgments. Petitioner requests installment payments be made to Petitioner from Dermot MacShane's salary to satisfy the outstanding

judgment.

In opposition Respondent Garnishee, Fund Office of Local 580 of Architectural and Ornamental Iron workers, states Petitioner's request to turnover funds from the pension plan benefits to which Dermot MacShane might be entitled is barred by ERISA and unenforceable.

An affidavit in opposition is submitted by Judith MacShane who states that Dermot MacShane's pensions and annuities are part of the equitable distribution to which she is entitled. Ms. MacShane alleges her interest herein are superior to any other claim and should be preserved.

After a review of the documents presented the Court directs that the Judgment Debtor, Dermot MacShane's employer, the New York City Police Department pay directly to Petitioner-Judgment Creditor, the sum of \$200 per pay period until the judgment owed herein is paid in full.

Additionally, any moneys held by HSBC, Citibank, Allstate Financial Services and or Wachovia f/k/a First Union in the name of Dermot MacShane will be turned over to the Petitioner Judgment Creditor Marshall E. Bloomfield, Esq. Toward the satisfaction of Petitioner's judgment.

This constitutes the order of the Court.



Andrew P. O'Rourke  
Justice of the Supreme Court

Dated: December 12, 2005  
Carmel, NY

2022/200

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF PUTNAM

MARSHALL E. BLOOMFIELD, ESQ

Petitioner-Judgment Creditor

-against-

Dermot Macshane,

Respondent-Judgment Debtor

Judith Macshane.

Respondent

AND

Sergeants Benevolent Association Annuity Fund, The City of  
New York Police Pension Fund, Fund Office of Local 580 of  
Architectural and Ornamental Iron Workers, Allstate Financial  
Services, HSBC, Citibank, New York City Police Department,  
Wachovia f/k/a First Union,

**INFORMATION SUBPOENA  
WITH Rule 5224  
CERTIFICATION & ANNEXED  
QUESTIONNAIRE**

To:	Fund Office of Local 580 of Architectural and Ornamental Iron Workers 501 W 42 ST NY, NY 10036
-----	--

WHEREAS, in an action in the, Supreme Court of the State of New York County of Putnam with as Plaintiff(s) and , as Defendant(s) who are all the parties in said action, a judgment was entered on 01/16/2005 in favor of Marshall E. Bloomfield Esq. Judgment Creditor and against, and against, Dermot Macshane, Judgment Debtor(s) in the amount of \$30,292.19 of which \$31,489.91 together with interest thereon from March 20, 2007 remains due and unpaid; and,

NOW, THEREFORE WE COMMAND YOU, that you answer in writing under oath, separately and fully, each question in the questionnaire accompanying the subpoena, each answer referring to the question to which it responds and that you return the answers together with the original of the questions within 7 days after your receipt of the questions and this subpoena.

TAKE NOTICE that false swearing or failure to comply with this subpoena is punishable as contempt of court.

PLEASE TAKE NOTICE that you are hereby commanded to answer fully each and every question herein below set forth to the best of your ability, and wherever possible to do so in the space provided thereunder, returning the original thereof,

SIGNED BEFORE A NOTARY PUBLIC, in the prepaid, self-addressed envelope enclosed, within seven (7) days after your receipt of these Questions and the Subpoena annexed hereto.

NOTICE: CPLR Rule 5224(a)3 STATES, (and we require compliance with):

"EACH QUESTION SHALL BE ANSWERED SEPARATELY & FULLY and EACH ANSWER SHALL REFER TO THE QUESTION TO WHICH IT REFERS. . . ANSWERS SHALL BE RETURNED WITH THE ORIGINAL OF THE QUESTIONS within SEVEN days after receipt."

I HEREBY CERTIFY that this Information Subpoena complies with Rule 5224 of the Civil Practice Law and Rules and that I have a reasonable belief that the party receiving this Information Subpoena has in their possession information about the Judgment Debtor(s) that will assist the Judgment Creditor in collecting the Judgment.

**YOUR SHORT FORM WILL NOT BE COMPLIANCE!**

Answers shall be made by any officer, agent, or employee having the information if you are a corporation, partnership or sole proprietorship.

Dated: Bronx, New York  
March 20, 2007

Marshall E. Bloomfield, ESQ  
Attorney for Judgment Creditor(s)  
349 E 149 ST, BX NY 10451-5601  
(718) 665-5900 or (212) 662-1871  
Attorney Filed 8810V

NOTE: There is a Restraining Notice attached hereto and served simultaneously.

Please do not hesitate to contact this firm if you have questions or need more information!

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF PUTNAM

2022A

MARSHALL E. BLOOMFIELD, ESQ

Plaintiff-Judgment Creditor

-against-

Dermot MacShane,

Respondent-Judgment Debtor

Judith MacShane,

Respondent

AND

Sergeants Benevolent Association Annuity Fund, The City of  
New York Police Pension Fund, Fund Office of Local 580 of  
Architectural and Ornamental Iron Workers, Allstate Financial  
Services, HSBC, Citibank, New York City Police Department,  
Wachovia N/A First Union.

QUESTIONNAIRE

To: Fund Office of Local 580 of Architectural and Ornamental Iron Workers  
501 W 42<sup>ND</sup> ST  
NY, NY 10036

STATE OF NEW YORK

SS:

COUNTY OF

I, Peter Myers

BEING SWORN DEPOSES AND SAYS: THAT DEPONENT IS THE

Fund Director of I.W. Local 580

RECIPIENT OF AN INFORMATION SUBPOENA HEREIN AND OF THE ORIGINAL  
AND A COPY OF QUESTIONS ACCOMPANYING SAID SUBPOENA. THE ANSWERS SET FORTH BELOW ARE MADE FROM INFORMATION  
OBTAINED FROM RECORDS OF THE RECIPIENT:

(IF YOU NEED MORE SPACE, YOU MAY ATTACH ADDITIONAL SHEETS OF PAPER TO THIS SUBPOENA)

PLEASE CHECK ALL ACCOUNTS INCLUDING BUT NOT LIMITED TO:

A>> WAS THERE EVER \* AN ACCOUNT AT YOUR BANK, EVEN IF NOW 'CLOSED'?  
\* (CERTAINLY WITHIN LAST 3 YEARS UNLESS YOUR RECORDS GO FURTHER!)

MUST ANSWER>> YES: ☒ NO: ☐ <<INITIAL CORRECT ANSWER

AND,

B>> AFTER A THOROUGH AND EXHAUSTIVE CHECK OF ALL YOUR RECORDS, HAVE YOU FOUND ANY ACCOUNTS, AND  
WHETHER OR NOT THEY ARE PRESENTLY OPEN OR CLOSED, FOR EITHER ACCOUNTS OR LOANS, AT ANY OF YOUR  
NUMEROUS OFFICES OR BRANCHES?

MUST ANSWER>> YES: ☒ NO: ☐ <<INITIAL CORRECT ANSWER

<<THANK YOU FOR YOUR COOPERATION>>

<<REMINDER: YOUR ANSWER MUST BE NOTARIZED>>

IF THE ANSWER TO NO. "B>>" ON PRIOR PAGE IS "YES", AND IF THERE WERE (OR ARE) OPEN OR CLOSED ACCOUNTS (INCLUDING IN  
ANY OF YOUR BRANCHES). YOU MUST FILL OUT THE REMAINING QUESTIONS WITHIN THIS SUBPOENA. ON THE OTHER HAND, IF THE  
ANSWER IS "NO", AND IF YOU'RE SURE, YOU NEED NOT ANSWER ANY MORE QUESTIONS --- JUST INITIAL EACH ANSWER AND SIGN ON THE  
LAST PAGE BEFORE A NOTARY PUBLIC AFTER SWEARING TO THE ACCURACY OF YOUR ANSWERS.

WHERE ANSWER TO "A>>" OR "B>>" "YES" THEN:

L. SET FORTH EACH & EVERY ITEM SHOWN ON YOUR ACCOUNT RELATIONSHIP/CUSTOMER DATA BASE (OR RECORDS), OR  
OTHERWISE WITHIN YOUR POSSESSION, ACCESS, AND/OR CONTROL, WITH REFERENCE TO ABOVE-NAMED JUDGMENT DEBTOR(S),  
INCLUDING, BUT NOT LIMITED TO:

- A. THE EXACT TITLE AND ACCOUNT NUMBER OF EACH AND EVERY ACCOUNT, OR RELATED ACCOUNT, AND WHETHER PAST OR PRESENT, OPEN OR CLOSED, AND IF CLOSED ON WHAT DATE:

LOCAL 580 Annuity Fund. 133-58-5507. Open

- B. SET FORTH WHETHER OR NOT THE SAID ACCOUNT(S) ARE WITH YOUR BANK; AND IF "YES", WITH WHICH BRANCH, AND ITS ADDRESS:

Local 580 Annuity Fund.  
501 West 42nd St. N.Y. N.Y. 10036

- C. FOR EACH SAID ACCOUNT, SET FORTH THE CURRENT BALANCE:

\$ 59,804.80

- D. SET FORTH WHETHER OR NOT EACH ACCOUNT ENUMERATED IS NOW OPEN OR CLOSED, AND IF CLOSED, SET FORTH THE DATE OF CLOSING THEREOF, PLUS THE PAYEE, DATE AND AMOUNT OF LAST 10 WITHDRAWALS, PLUS THE PAYOR, DATE, AND AMOUNT OF LAST 10 DEPOSITS.

Opened.

2. SET FORTH ALL EMPLOYMENT INFORMATION SHOWN ON YOUR RECORDS, INCLUDING DATES OF EMPLOYMENT & YOUR VERIFICATION THEREOF.

NOT AN EMPLOYEE. he is a member of this uni

3. SET FORTH THE DATE OF BIRTH OF THE JUDGMENT DEBTOR(S).

12-21-1959

4. SET FORTH THE SOCIAL SECURITY NUMBER OF THE JUDGMENT DEBTOR(S).

133-58-5507

5. SET FORTH ALL CREDIT INQUIRIES RECEIVED RELATIVE TO JUDGMENT DEBTOR(S). (WHO INQUIRED? WHEN? WHAT WAS STATED PURPOSE OF INQUIRY?)

UNKNOWN

6. SET FORTH THE TITLE OR POSITION OF THE EMPLOYEE(S) (JUDGMENT DEBTOR(S)).

NOT A EMPLOYEE.

7. SET FORTH THE ANNUAL SALARY OF THE SAID JUDGMENT DEBTOR(S).

UNKNOWN

8. IF THE JUDGMENT DEBTOR(S) IS/ARE MARRIED, SET FORTH THE NAME, (MAIDEN NAME IF APPROPRIATE, SOCIAL SECURITY NUMBER, AND ADDRESS OF THE SPOUSE.

N/A

9. SET FORTH NAME & ADDRESS ANY KNOWN DEPENDANTS OF DEBTOR(S).

STIOBHAN  
1030 HOLLYWOOD AVE. BRONX N.Y. 10465

MACSHANE

V. DERMOT MACSHANE SSN 104607 is Fund Officer of Local 580 of Architecture and Ornamental Iron Workers 070320-LF, WPD



10. SET FORTH ALL REAL PROPERTY OWNED BY THE JUDGMENT DEBTOR(S).

UNKNOWN

11. SET FORTH THE NAME AND ADDRESS OF THE CLOSEST LIVING RELATIVE OF THE JUDGMENT DEBTOR(S).

UNKNOWN

12. SET FORTH ALL REFERENCES (BOTH BUSINESS, BANKING, AND PERSONAL) LISTED BY THE JUDGMENT DEBTOR(S), AS WELL AS THEIR ADDRESSES.

UNKNOWN

13. SET FORTH ALL ASSETS LISTED BY THE JUDGMENT DEBTOR(S).

UNKNOWN

14. SET FORTH THE YEAR, MAKE, AND LICENSE NUMBER AND/OR REGISTRATION NUMBER OF ANY VEHICLES OWNED BY THE JUDGMENT DEBTOR(S).

UNKNOWN

15. SET FORTH WHETHER OR NOT THE RECORDS KEPT IN THE NORMAL COURSE OF BUSINESS INDICATES THAT ANY OPEN ACCOUNT HAS A HIGHER BALANCE AT ANY GIVEN DAY OF THE WEEK, TIME OF THE MONTH, PERIOD OF THE YEAR, AND IF SO, IDENTIFY THE SAME.

N/A

16. SET FORTH WHETHER OR NOT THERE IS ANY PERSON OR PERSONS WITHIN THE BANK PARTICULARLY FAMILIAR WITH THE ABOVE ACCOUNT(S) OR RELATED BUSINESS, AND IF SO, SET FORTH THE PERSON'S NAME AND TITLE.

UNKNOWN

17. IF THE ANSWER TO NO. 16 IS AFFIRMATIVE, PLEASE HAVE SAID PERSON REVIEW AND SUPPLEMENT THE ANSWERS PREVIOUSLY PROVIDED ELSEWHERE HEREIN: IT GOES TO THE ESSENCE OF THE INTEGRITY OF THE ANSWERS PROVIDED BY YOU THAT YOUR ANSWERS ACCURATELY REFLECT AND PRESENT A TRUE AND ACCURATE PICTURE OF THE INFORMATION SOUGHT HEREIN.

N/A

18. PLEASE SET FORTH THE MOST RECENT HOME ADDRESS YOUR RECORDS INDICATE FOR EACH NAMED JUDGMENT DEBTOR(S):

1030 HOLLYWOOD AVE. BRONX N.Y. 10465



19. STATE WHETHER THERE ARE ANY PENDING TRANSACTIONS OR SUMS OF MONEY PRESENTLY DUE OR TO BECOME DUE TO JUDGMENT DEBTOR(S), AND IF SO, THE AMOUNTS THEREOF. IF AFFIRMATIVE, SET FORTH INFORMATION THEREON:

NONE AT THIS TIME

20. IF THE JUDGMENT DEBTOR(S) RECEIVE AUTOMATIC DEPOSITS OR WITHDRAWS FROM ANY OPEN OR CLOSED ACCOUNT AT YOUR INSTITUTION, PLEASE SET FORTH ALL INFORMATION REGARDING THESE TRANSACTIONS.

N/A

21. IF ANY OF THE OPEN OR CLOSED ACCOUNTS WAS LINKED TO A BROKERAGE ACCOUNT, OR MORTGAGE ACCOUNT, PLEASE SET FORTH ALL INFORMATION REGARDING THE LINKED ACCOUNT(S).

N/A

TAKE FURTHER NOTICE, THAT FALSE SWEARING OR FAILURE TO COMPLY WITH EACH AND EVERY ONE OF THE ABOVE ITEMS SET FORTH IN THE ABOVE SUBPOENA IS PUNISHABLE AS A CONTEMPT OF COURT.

DATED: BRONX, NEW YORK  
MARCH 20, 2007

MARSHALL E. BLOCKFIELD, ESQ.  
ATTORNEY FOR JUDGMENT CREDITOR(S)  
340 E 149 ST, BX NY 10451-560  
(718) 662-5980 OR (212) 662-1871  
ATTORNEY FILE#: 8810A

THE UNDERSIGNED REPRESENTS THAT THE ABOVE ANSWERS ARE TO THE BEST OF MY ABILITY!

Peter Myers  
BY: Peter Myers  
(NAME SIGNED MUST BE PRINTED BELOW)

SWORN TO BEFORE ME THIS 3

DAY OF APRIL, 2007.

Patrick Doherty  
NOTARY PUBLIC

PATRICK DOHERTY  
Notary Public, State of New York  
No. 01D08018158  
Qualified in Rockland County  
Commission Expires Jan. 4, 2011

NOTE: YOU ONLY HAVE TO RETURN THE ORIGINAL TO OUR OFFICE THE "COPY" IS FOR YOUR RECORDS AND RETURNING IT TO US MAY REQUIRE YOU TO PLACE EXTRA POSTAGE ON THE ENVELOPE PROVIDED!

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF PUTNAM

**Marshall E. Bloomfield.**

Index No:

**Petitioner-Judgment Creditor**

**-against-**

## VERIFICATION

**Dermot MacShane**

**Respondent-Judgment Debtor**

And

Sergeant's Benevolent Association Annuity Fund. The City of New York Police Pension Fund, and the Fund Office of Local 580 of Architectural and Ornamental Iron Workers,

### Respondents.

STATE OF NEW YORK

**SS:**

County of Bronx - )

I, Marshall E. Bloomfield, being sworn, say: I am the Petitioner-Judgment Creditor in the within Proceeding and that I have read the foregoing attached Petition and know the contents thereof and that the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe it to be true.

Marshall E. Bloomfield

Sworn to before me  
This 4<sup>th</sup> day of May,  
2007.

**NOTARY PUBLIC**

JOSEPHINE AVILES  
Notary Public, State of New York  
No. D1AV508D851  
Qualified in Bronx County  
Commission Expires June 23, 2007

Index No.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF PUTNAM

Marshall E. Bloomfield,

Petitioner-Judgment Creditor

-against-

Demetri MacShane,

Respondent-Judgment Debtor

And

Sergeant's Benevolent Association Annuity Fund, The City of New York Police  
Pension Fund, and the Fund Office of Local 580 of Architectural and Ornamental  
Iron Workers,

Respondents.

ORDER TO SHOW CAUSE, VERIFIED PETITION,  
AND SUPPORTING DOCUMENTS

LAW OFFICES OF  
MARSHALL E BLOOMFIELD, ESQ

Attorney for Plaintiff

Office, Post Office Address and Telephone

349 E 149<sup>ST</sup>  
BX, NY 10451-5603  
(718) 665-5900  
(212) 662-1870

To:

Attorney(s) for Defendant

8810M